

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

H. Jeannie Napolitano, in her
individual and representative
capacity as trustee of the Napolitano
Family Survivors Trust;
Delux Dogs, LLC, a California
Limited Liability Company; and
Does 1-10,

Defendants.

Case: 3:14-CV-00816-BEN-KSC

**First Amended Complaint For
Damages And Injunctive Relief
For Violations Of: American's
With Disabilities Act; Unruh Civil
Rights Act; California Disabled
Persons Act; Negligence**

Plaintiff Chris Langer complains of Defendants H. Jeannie Napolitano, in her individual and representative capacity as trustee of the Napolitano Family Survivors Trust; Delux Dogs, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side

1 of his van and he has a Disabled Person Parking Placard issued to him by the
2 State of California.

3 2. Defendant Delux Dogs, LLC owns and operates Delux Dogs
4 (“Restaurant”) located at or about 943 Orange Avenue, Coronado,
5 California, now and did so in March 2014.

6 3. Defendant H. Jeannie Napolitano, in her individual and representative
7 capacity as trustee of the Napolitano Family Survivors Trust, owns the
8 property located at or about 943 Orange Avenue, Coronado, California, now
9 and did so in March 2014.

10 4. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained
13 of, and alleges a joint venture and common enterprise by all such
14 Defendants. Plaintiff is informed and believes that each of the Defendants
15 herein, including Does 1 through 10, inclusive, is responsible in some
16 capacity for the events herein alleged, or is a necessary party for obtaining
17 appropriate relief. Plaintiff will seek leave to amend when the true names,
18 capacities, connections, and responsibilities of the Defendants and Does 1
19 through 10, inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 5. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
24 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 6. Pursuant to pendant jurisdiction, an attendant and related cause of
26 action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California’s Unruh Civil Rights
28 Act, and the California Disabled Persons Act, which acts expressly

1 incorporate the Americans with Disabilities Act.

2 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action
4 is located in this district and that Plaintiff's cause of action arose in this
5 district.

6
7 **FACTUAL ALLEGATIONS:**

8 8. The Plaintiff went to the Restaurant in March of 2014, to eat.

9 9. The Restaurant is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 10. Parking spaces are one of the facilities, privileges and advantages
12 offered by defendants to their customers at the Restaurant.

13 11. Unfortunately, there are no accessible, compliant parking spaces
14 available for disabled customers at the Restaurant.

15 12. Rather, there is a parking space reserved for disabled customers but
16 there is no access aisle that accompanies the parking space. As a result, it is
17 not useable or functional for plaintiff.

18 13. Plaintiff, on information and belief, alleges that a fully accessible
19 handicap parking space once existed at this location, however.

20 14. But, because defendants have no policy or procedure to maintain their
21 parking spaces, the previous parking space and access aisle serving the
22 disabled community has faded beyond oblivion or been paved over.

23 15. The plaintiff personally encountered this problem. This inaccessible
24 condition denied the plaintiff full and equal access and caused him difficulty.

25 16. Additionally, on information and belief, the plaintiff alleges that the
26 failure to remove these barriers was intentional because: (1) these particular
27 barriers are intuitive and obvious; (2) the defendants exercised control and
28 dominion over the conditions at this location and, therefore, the lack of

1 accessible facilities was not an “accident” because had the defendants
 2 intended any other configuration, they had the means and ability to make the
 3 change.

4
 5 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 6 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against
 7 all defendants (42 U.S.C. section 12101, et seq.)

8 17. Plaintiff repleads and incorporates by reference, as if fully set forth
 9 again herein, the allegations contained in all prior paragraphs of this
 10 complaint.

11 18. Under the ADA, it is an act of discrimination to fail to ensure that the
 12 privileges, advantages, accommodations, facilities, goods and services of
 13 any place of public accommodation is offered on a full and equal basis by
 14 anyone who owns, leases, or operates a place of public accommodation. See
 15 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 16 a. A failure to make reasonable modifications in policies, practices,
 17 or procedures, when such modifications are necessary to afford
 18 goods, services, facilities, privileges, advantages, or
 19 accommodations to individuals with disabilities, unless the
 20 accommodation would work a fundamental alteration of those
 21 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 22 b. A failure to remove architectural barriers where such removal is
 23 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 24 defined by reference to the ADAAG, found at 28 C.F.R., Part
 25 36, Appendix “D.”
- 26 c. A failure to make alterations in such a manner that, to the
 27 maximum extent feasible, the altered portions of the facility are
 28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to
2 the maximum extent feasible, the path of travel to the altered
3 area and the bathrooms, telephones, and drinking fountains
4 serving the altered area, are readily accessible to and usable by
5 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

6 19. Any business that provides parking spaces must provide handicap
7 parking spaces. 1991 Standards § 4.1.2(5). One in every eight of those
8 handicap parking spaces but not less than one must be a “van” accessible
9 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §
10 4.1.2(5)(b).

11 20. Here, there was no accessible parking because, while there was a
12 dedicated parking space for disabled customers, there was no access aisle
13 accompanying the parking space. The lack of an access aisle is a violation of
14 the law.

15 21. Plaintiff, on information and belief, alleges that a fully compliant
16 parking space once existed at this location.

17 22. However, the defendants have no policy or procedure to maintain their
18 parking spaces so that they do not fade beyond oblivion or get paved over.

19 23. The Defendants are persons who own, operate, lease or lease to a
20 place of public accommodation. As such, the Defendants are required to
21 ensure that persons with disabilities are not discriminated against and,
22 additionally, have specific duties to (1) ensure that all construction,
23 alteration, or modification is barrier free and complies with the Americans
24 with Disabilities Act Accessibility Guidelines (“ADAAG”); and/or (2)
25 remove all existing barriers where such removal is “readily achievable,”
26 and/or (3) to provide alternatives to barrier removal. The Defendants have
27 failed to meet these obligations.
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**
 2 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)
 3 (Cal Civ § 51-53)

4 24. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint.

7 25. Because the defendants violated the plaintiffs' rights under the ADA,
 8 they also violated the Unruh Civil Rights Act and are liable for damages.
 9 (Civ. Code § 51(f), 52(a).)

10 26. Because the violation of the Unruh Civil Rights Act resulted in
 11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 13 55.56(a)-(c).)

14
 15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
 16 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
 17 against all defendants) (Cal Civ. § 54-54.8)

18 27. Plaintiff repleads and incorporates by reference, as if fully set forth
 19 again herein, the allegations contained in all prior paragraphs of this
 20 complaint.

21 28. Because the defendants violated the plaintiff's rights under the ADA,
 22 they also violated the Disabled Persons Act and are liable for damages. (Civ.
 23 Code § 54.1(d), 54.3(a).)

24 29. Because the violation of the Disabled Persons Act resulted in
 25 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 26 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 27 55.56(a)-(c).)

1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
2 plaintiff and against all defendants)

3 30. Plaintiff repleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint.

6 31. The Defendants had a general duty and a duty arising under the
7 Americans with Disabilities Act and the Unruh Civil Rights Act and
8 California Disabled Persons Act to provide safe, convenient, and accessible
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the
10 preceding paragraphs, has caused injury and damage as alleged above.

11
12 **PRAYER:**

13 Wherefore, Plaintiff prays that this court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California
20 Disabled Persons Act which damages provide for actual damages and a
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
22 acts, simultaneously, and an election will be made prior to or at trial.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3
4 Dated: April 28, 2014

CENTER FOR DISABILITY ACCESS

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6 By: 

7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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